THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20518 OF 2006

DATED 29th SEPTEMBER, 2006

BETWEEN

K.Janardhana Rao

… Petitioner

and

Union of India, rep.by the Secretary, Ministry of Urban Development, Government of India, Nirman Bhaan, New Delhi and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20518 OF 2006

ORDER:

The petitioner herein and his three sons filed declarations under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act, for brevity) before the third respondent, namely, Special Officer & Competent Authority, Hyderabad Urban Agglomeration. All of them declared land admeasuring Acs.14.21 guntas in survey Nos.9. 13 and 19/1 situated at Ibrahimbagh village, Golconda Mandal, Hyderabad. The third respondent after conducting enquiry, issued draft statement under Section 8(1) of the ULC Act. The petitioner filed objections. After considering the objections, by proceedings dated 20.09.1988, the petitioner was declared to be holder of surplus vacant land admeasuring Acs.34,338.88 square meters out of 41,525 square meters declared by them. The petitioner then filed appeal before the third respondent, which was dismissed on 12.09.1995. The same was challenged in W.P.No.23226 of 1995 before this Court. By order, dated 21.04.2005, this Court set aside the order of the third respondent as confirmed by the fourth respondent and remitted the matter to the third respondent for fresh consideration.

After remand, notice was issued to the petitioner and other declarants. The petitioner and his sons *inter alia* contended that they are entitled for the benefit of the orders of the Government in G.O.Ms.No.733 and that ULC Act is not applicable to their lands. After considering the objections and the relevant records, the third respondent passed order on 23.08.2006 concluding that the sons of the petitioner have failed to produce any evidence in support of the title over the land and that the entire land continued to be in the holding of the petitioner herein. The third respondent also held that the land in survey Nos.9 and 19/1 of Ibrahimbagh fall under core area and therefore, the orders in G.O.Ms.No.733 are not applicable. Accordingly, an extent of 39,402.24 square meters was declared and a final statement under Section 9 of the ULC Act was accordingly issued. This order is subject matter of challenge in this case.

The petitioner filed the present writ petition challenging the constitutional validity of clause 2(h) of ULC Act as violative of Article

252(2) of Constitution of India and for a further declaration that ULC Act has no application to the land held by the petitioner and to declare the proceedings of the third respondent, dated 23.08.2006 as illegal and arbitrary.

Learned counsel for the petitioner strenuously contends that Section 2(h) of the ULC Act, which defines the term "master plan" is *ultra vires* and violative of clause (2) of Article 252 of Constitution of India. He submits that though the Supreme Court in **State of Andhra Pradesh v N.Audikesava Reddy**[1], held that the land falling within the area of extended master plan also comes under ULC Act, left the question open as to the consequences of filing a statement by a person under wrong impression, that the vacant land held by him is in excess of ceiling limit, if it is not so when he filed a statement. According to the learned counsel, as State Legislature passed resolution on 08.04.1972 authorising Parliament to make law imposing ceiling of urban immovable property, the master plan prepared or modified under State law i.e., A.P.Urban Areas (Development) Act, 1975 cannot bring the land within the purview of the ULC Act. He would urge that; it amounts to amendment to Central Act. **Per contra**, learned Assistant Government Pleader submits that ULC Act has been upheld by the Supreme Court and that in **Audikesava Reddy** (supra), the Supreme Court held that the land which was not initially in the master plan area, comes within the definition of vacant land subsequently, if the master plan is extended to such area. Therefore, he would submit that the question of constitutional validity cannot be gone into again. Secondly, he would urge that against the order of the third respondent, the petitioner has an effective alternative remedy regarding other questions and therefore, the writ petition is not maintainable.

In **Bhim Singhji v Union of India**[2], a Constitution Bench of the Supreme Court by a majority held that, "the entire ULC Act is valid, save and except under Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area." When the Supreme Court has upheld the validity of the entire ULC Act, the challenge to the Act or any of its provisions again and again on some new ground is not permissible in law. This is well settled principle. In **D.C. and G. Mills v Shambhu Nath**[3], the Supreme Court laid down as under.

> It is submitted by Mr.Dial that in that decision this Court was only required to consider the objection raised on the score of Article 14 on a ground which is different from the one he would like to take befor4e us. We are, however, unable to accept this submission. **If this Court held S.10 as ultra vires and repelled the objection under Art. 14 of the Constitution it would not be permissible to raise the question again by**

> **submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this Court holding that S. 10 of the Act does not violate Art. 14 of the Constitution.** The ratio decidendi of Niemla Textile Finishing Mills Limited v the 2nd Punjab Industrial Tribunal[4] will apply while dealing with the objection under Art. 14 of the Constitution in respect of the present reference under S. 10(1)(c) of the Act. The submission of the learned counsel is, therefore, devoid of substance.
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> (emphasis supplied)

Therefore, the challenge to Section 2(h) of the ULC Act is misconceived.

In **Atia Mohammadi Begum v State of Uttar Pradesh**[5], the two Judge Bench of the Supreme Court held that when the land was not vacant land on the date of the commencement of the Act, the authorities cannot convert the land into vacant land by their unilateral act by including it in the master plan for a purpose other than agriculture. However, a three Judge Bench reconsidered the same issue in **Audikesava Reddy** (supra). The latter Bench held that the ratio in **Atia Mohammadi Begum** (supra) is not correct and held as under.

> …Further, the explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under clause (ii) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17-2-1976. **Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17-2-1976. It would all depend on the facts and circumstances of each case**.
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> (emphasis added)

When the land is not urban vacant land for the purpose of ULC Act and by reason of extension of master plan, the land is not converted into vacant land by an act of the State (i.e., extending master plan) as held by the Supreme Court the date of commencement for the purpose of ULC

Act would be the date when the master plan is notified or the date when such notified master plan is extended as per Section 2(h) of the ULC Act. In such cases, the authorities under the ULC Act have to reckon the date of commencement for the purpose of Section 6 of the ULC Act from the date of extension of the master plan.

In the considered opinion of this Court, in **Audikesava Reddy** (supra), Supreme Court laid down that the extended master plan altering the nature of the land is valid. This Court is not able to accept the submission of the learned counsel for the petitioner that the question of constitutional validity of Section 2(h) of the ULC Act is left open by the Supreme Court.

Insofar as the challenge to Section 2(h) of the ULC Act is concerned, the writ petition is misconceived and is dismissed. However, it shall be open to the petitioner to avail the remedy under Section 33 of the ULC Act and file appeal before the fourth respondent against final statement/orders of the third respondent.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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(V.V.S.RAO,J)

29.09.2006.
pln

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[1] (2002) 1 SCC 227 = AIR 2002 SC 5

[2] AIR 1981 SC 234

[3] AIR 1978 SC 8

[4] AIR 1957 SC 329

[5] (1993) 2 SCC 546 = AIR 1993 SC 2465